

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GAL SPIEGLER,

Plaintiff,

-v-

MISH MISH, INC., et al.,

Defendants.

22 Civ. 8774 (PAE)(GWG)

OPINION & ORDER

PAUL A. ENGELMAYER, District Judge:

Currently pending is a motion by defendants Mish Mish Inc. (“Mish Mish”) and Mishelle Weinerman to dismiss plaintiff Gal Spiegler’s First Amended Complaint (“FAC”) for failure to state a claim under Rule 12(b)(6) of the Federal Rules of Civil Procedure. Dkts. 19, 26. Before the Court is the October 11, 2023 Report and Recommendation of the Hon. Gabriel W. Gorenstein, United States Magistrate Judge, recommending that the Court grant defendants’ motion in part and deny it in part. Dkt. 34 (“Report”). The Court incorporates by reference the summary of the facts provided in the Report. For the following reasons, the Court adopts this recommendation.

DISCUSSION

In reviewing a Report and Recommendation, a district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). “To accept those portions of the report to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record.” *Ruiz v. Citibank, N.A.*, No. 10 Civ. 5950 (KPF), 2014 WL 4635575, at *2 (S.D.N.Y.

Aug. 19, 2014) (quoting *King v. Greiner*, No. 02 Civ. 5810 (DLC), 2009 WL 2001439, at *4 (S.D.N.Y. July 8, 2009)); *see also, e.g., Wilds v. United Parcel Serv.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003).

As no party has submitted objections to the Report, review for clear error is appropriate. Careful review of Judge Gorenstein's thorough and well-reasoned Report reveals no facial error in its conclusions; the Report is therefore adopted in its entirety. Because the Report explicitly states that "[i]f a party fails to file timely objections, that party will not be permitted to raise any objections to this Report and Recommendation on appeal," Report at 18, the parties' failure to object operates as a waiver of appellate review. *See Caidor v. Onondaga Cty.*, 517 F.3d 601, 604 (2d Cir. 2008) (citing *Small v. Sec'y. of Health & Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989) (per curiam)).

CONCLUSION

For the foregoing reasons, the Court denies grants defendants' motion to dismiss in part and denies in part.

SO ORDERED.



Paul A. Engelmayer
United States District Judge

Dated: November 3, 2023
New York, New York